92-1198

Supreme Court, U.S.
FILED
DEC 31 1992
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM ELLIS MATYASTIK,

Petitioner

v.

THE STATE OF TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
COUNTY COURT AT LAW NO. 2
MCLENNAN COUNTY, TEXAS

PETITION FOR WRIT OF CERTIORARI

William Ellis Matyastik
PETITIONER
2115 Washington Avenue
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24 pp

QUESTIONS PRESENTED

1. Is it a denial of due process of law to afford every other citizen a 10-day notice of an alleged violation of the weed/grass ordinance of the City of Waco but to deny the 10-day notice and opportunity to cure to Petitioner?

2. Is it a denial of due process of law for the City of Waco and the State of Texas to fabricate evidence, suborn witnesses to perjury, and to conspire to deny Petitioner the equal protection of the law?

LIST OF PARTIES

The parties ot the proceedings below were as follows:

Petitioner: William Ellis Matyastik and

Respondent: The State of Texas

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

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v.

THE STATE OF TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
COUNTY COURT AT LAW NO. 2
MCLENNAN COUNTY, TEXAS

The petitioner William Ellis Matyastik respectfully prays that a writ of certiorari issue to review the judgment and opinion of the County Court at Law No. 2, McLennan County, Texas, entered in the above-entitled proceeding on October 17, 1991.

OPINIONS BELOW

The opinions of the Courts below were not printed.

They are reprinted in the appendix hereto, p. 1 a, *infra*.

JURISDICTION

The jurisdiction of this Court to review the judgment of the County Court at Law No. 2, McLennan County, Texas, is invoked under 28 U.S.C. Sec. 1257(3).

STATEMENT OF THE CASE

This case arose out of an alleged violation of the City Ordinance of the City of Waco, Sec. 17-65(a)(1). This is an appeal by Petitioner, William Ellis Matyastik, from a conviction of the offense of allowing weeds and grass to grow to a height exceeding 12 inches.

Petitioner was tried on a plea of not guilty to a jury on September 17, 1991, and was found guilty. The jury assessed a fine of $100.00. Petitioner has been denied an appeal due to the small amount of the fine.

On June 10, 1992, the Tenth Court of Appeals for the State of Texas dismissed Petitioner's appeal because of the small amount of the fine.

On September 30, 1992, the Court of Criminal Appeals for the State of Texas refused Petitioner's Petition for Discretionary Review.

The judgment and sentence were dated on October 17, 1992.

At trial, the State's witness testified that there was a ten day notice that was given to every other person subject to the City Ordinance that gave rise to this prosecution and that every other citizen was given a ten day opportunity to cure the alleged violation of the City ordinance.

However, Petitioner was not afforded the ten day notice and the ten day opportunity to cure the alleged violation of the weed/grass ordinance of the City of Waco. Statement of Facts, page 47, line 16 and 17; page 49, lines 6-11; page 88, lines 17-24, Vol. II.

Petitioner was denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the Constitution of the United States.

The failure of the City of Waco to give Petitioner the ten day notice letter and opportunity to cure the alleged violation was raised during the trial of this case. Statement of Facts, Page 47, line 12-16, Vol. II contains the testimony of the City inspector that the notice provision of the City is a ten day notice; Page 49, lines 6-11 contains the testimony of the City inspector that he gave the Petitioner no notice of the alleged violation; Page 88, lines 17-24 contain the testimony of the City inspector that there was no communication with the Petitioner in regard to the alleged violation of grass ordinance by Petitioner

The matter was raised again in the Motion for New Trial. Transcript, Vol. I, pages 62-66; Statement of Facts, Vol, IV, pages 240-244.

REASONS FOR GRANTING THE WRIT

The City Ordinance Sec. 66 of the City of Waco contains a clause that provides that notice is not required for the prosecution of alleged violations of the Waco City Ordinance. Respondent has used this porvision in its City Ordinance to deny to Petitioner the ten day notice and opportunity to cure the violation that the City of Waco provides to every other person who is subject to its City Ordinance.

As the Waco City Ordinance recites that notice is not required prior to prosecution of alleged violations of the City Ordinance, the Respondent has used its own ordinance to deny to Petitioner due process of law and the equal protection of the law that is afforded to every other person who is subject to the Waco City Ordinance, Sec. 17-65(a)(1).

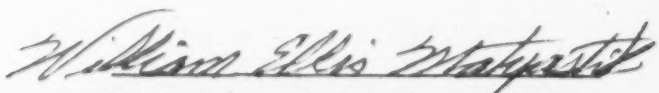
Further, Petitioner has been denied any appellate review of the matter based on the amount of the fine.

The writ should be granted so that Petitioner may be afforded the equal protection of the law and due process of law.

CONCLUSION

For these reasons, this petition for certiorari should be granted.

Respectfully submitted,



William Ellis Matyastik
2115 Washington Avenue
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JUDGMENT

NO. 903936CR2

THE STATE OF TEXAS	X	IN THE COUNTY
VS.	X	COURT AT LAW OF
WILLIAM ELLIS	X	MCLENNAN COUNTY,
MATYASTIK	X	TEXAS

JUDGMENT

On this 17 day of Oct. 1991, the above entitled and numbered cause was called for trial, and the Defendant, and the Defendant's counsel, Jane Vorwerk, and the State's attorney, all being present in open Court, and the Defendant having been duly arraigned in open Court, and having pled not guilty to the charges contained in the Complaint filed herein, both parties announced ready for trial; thereupon a jury of good and lawful persons, to-wit: Rex B. Rogers, Jr. and five others, was duly selected, impaneled and sworn, who, having heard the Complaint read, and the

Defendant's plea of not guilty thereto, and having heard the evidence submitted, and having been duly charged by the Court, and having heard the argument of counsel, retired in charge of the proper officer to consider of their verdict, and afterward, to-wit: on the 18th day of September, 1991, said jury was brought into open Court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open Court the following verdict, which was received by the Court and is here and now entered upon the minutes of the Court, to-wit:

"We, the jury, find the Defendant guilty as charged in the complaint and assess his punishment at a fine of $100.00. /s/ Rex B. Rogers, Jr., Presiding Juror"

It is, therefore, CONSIDERED, ORDERED AND ADJUDGED BY THE Court that the Defendant is adjudged to be guilty of the offense of violation of weed/grass

ordinance, as found by the jury and that his punishment has been set at a fine of $100.00, and that the State of Texas do have and recover of said Defendant all costs of this prosecution, for which let execution issue, and the said Defendant is remanded to the custody of the Sheriff who will commit him forthwith to jail to await the further orders of the Court herein.

/s/ Michael Gassaway

Judge

SENTENCE

NO. 903936CR2

THE STATE OF TEXAS	X	IN THE COUNTY
VS.	X	COURT AT LAW OF
WILLIAM ELLIS	X	MCLENNAN COUNTY,
MATYASTIK	X	TEXAS

S E N T E N C E

On this the 17th day of October, 1991, the above entitled and numbered cause was again called for the purpose of having the sentence of law pronounced therein in accordance with the judgment therein rendered on the 18th day of September, 1991, and Defendant and Defendant's counsel (Defendant having knowingly, intellingently and voluntarily waived his right to counsel, and the Court having so found) and the State's attorney, all being present in open court, the Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced in this cause, and the

Defendant answered nothing in legal bar thereon;

WHEREUPON, the Court proceeded, in the presence of the Defendant, to pronounce sentence in this cause as follows:

It is the ORDER of this Court that said Defendant, who has been adjudged in this cause to be guilty of the offense of violation of City grass/weed ordinance and whose punishment therefor has been assessed in said judgment a fine of $100.00, together with all costs in this cause incurred, be committed to the Sheriff of McLennan County, Texas, to be confined in jail until all such costs and fines are paid, and said term of imprisonment has expired, in accordance with the provisions of, and in the manner prescribed by the laws of the State of Texas. It is further ORDERED that execution issue against the property of said Defendant for the amount

of said fine and costs.

/s/ Michael Gassaway

J U D G E

IN THE

TENTH COURT OF APPEALS

No. 10-92-006-CR

WILLIAM ELLIS MATYASTIK,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the County Court at Law No. 2

McLennan County, Texas

Trial Court # 903936 CR2

O P I N I O N

William Ellis Matyastik was convicted by the municipal court of the city of Waco of violating a city ordinance. On appeal to the County Court at Law, he was convicted by a jury. The jury's verdict, the judgment, and the sentence uniformly

assessed Matyastik a fine of $100. He appeals on seven points, including six complaining of the court's denial of his motion for a new trial and one alleging that the evidence was insufficient to sustain the conviction. The State has filed a motion to dismiss the appeal for want of jurisdiction.

Article 4.03 of the Code of Criminal Procedure states:

The Courts of Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court or county court at

law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

TEX. CODE CRIM. PROC. ANN. art 4.03 (Vernon Supp. 1992).

Review by this court is not available. The fine assessed by the court did not exceed $100, and Matyastik does not assert that the ordinance on which his conviction is based is unconstitutional. Thus, we have no jurisdiction. See id.; Lopez v. State, 649 S. W. 2d 165, 166 (Tex. App.-- El Paso 1983, no pet.).

The State's motion to dismiss the appeal for want of jurisdiction is granted, and the appeal is dismissed.

BILL VANCE

Justice

Before Chief Justice Thomas,
Justice Cummings, and
Justice Vance

THE STATE OF TEXAS

TENTH COURT OF APPEALS

CHIEF JUSTICE

Bob L. Thomas

CLERK

Bob Watts

JUSTICES

Bob Cummings

Bill Vance

June 10, 1992

In accordance with the enclosed Opinion, below is the judgment in the numbered cause set out herein to be entered in the Minutes of this Court as of the 10th day of June, 1992.

10-92-006-CR WILLIAM ELLIS MATYASTIK v. THE STATE OF TEXAS - ON APPEAL FROM COUNTY COURT AT LAW NO. 2 OF MCLENNAN COUNTY - DISMISSED - Opinion by Justice Vance:

"This cause came on to be heard on the State's motion to dismiss the appeal, and the same being considered, because it

is the opinion of this Court that the motion should be granted; it is therefore ordered, adjudged and decreed that the motion be, and hereby is, granted. It is further ordered, adjudged and decreed that the appeal be, and hereby is dismissed for want of jurisdiction in accordance with the opinion of this Court, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

PHONE (817) 757-5200

POST OFFICE BOX 1606

WACO, TEXAS 76703-1606

OFFICIAL NOTICE THE STATE OF TEXAS

COURT OF CRIMINAL APPEALS

September 28, 1992

COA#: 10-92-00006-CR

RE: Case No. 1187-92

STYLE: MATYASTIK, WILLIAM ELLIS

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS

P. O. BOX 12308, CAPITAL STATION

AUSTIN, TEXAS 78711

Supreme Court, U.S.
FILED
JAN 27 1993
OFFICE OF THE CLERK

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October Term, 1992

WILLIAM ELLIS MATYASTIK,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

Petition For Writ Of Certiorari To The County Court At Law No. 2 McLennan County, Texas

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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October Term, 1992

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Petition For Writ Of Certiorari To The County Court At Law No. 2 McLennan County, Texas

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, The State of Texas, respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner, William Ellis Matyastik, seeking review of the judgment and opinion of the County Court at Law No. 2 of McLennan County, Texas rendered on October 17, 1991.

OPINION BELOW

The judgments of the courts below are attached as appendices to Petitioner's petition.

STATEMENT OF THE CASE

Petitioner, William Ellis Matyastik, was charged with violating Section 17-65(a)(1) of the Code of Ordinances of the City of Waco by allowing weeds and grass to grow to a height exceeding 12 inches on his property. Petitioner pleaded not guilty and a trial before a jury was held in the Municipal Court of the City of Waco on December 14, 1990. The jury found the Petitioner guilty of violating Section 17-65(a)(1) of the Code of Ordinances of the City of Waco and assessed Petitioner's fine at $650.00 (Transcript, Volume 1, Page 027).

Petitioner appealed the case to the County Court at Law No. 2 of McLennan County, Texas and a trial de novo before a jury was held in that court beginning on September 17, 1991, and ending on September 18, 1991. This jury also found the Petitioner guilty of violating Section 17-65(a)(1) of the Code of Ordinances of the City of Waco and assessed Petitioner's fine at $100.00 (Transcript, Volume 1, page 060). The judgment and sentence were dated October 17, 1991, not October 17, 1992, as stated by Petitioner on page 4 of his Petition for Writ of Certiorari.

Petitioner appealed to the Tenth Court of Appeals for the State of Texas sitting in Waco, Texas, complaining of the trial court's denial of his motion for new trial and alleging that the evidence was insufficient to sustain the conviction. The Tenth Court of Appeals for the State of Texas ("the Tenth Court of Appeals") dismissed the appeal on June 10, 1992, because it did not have jurisdiction. Article 4.03 of the Code of Criminal Procedure of the State of Texas states that the Court of Appeals does not have jurisdiction in cases which have been appealed from

any inferior court to the county court at law, in which the fine imposed by the county court at law does not exceed $100, unless the sole issue is the constitutionality of the ordinance on which the conviction is based. The Tenth Court of Appeals correctly ruled that it did not have jurisdiction since the fine did not exceed $100, and Petitioner did not assert that the ordinance on which his conviction is based is unconstitutional.

Petitioner subsequently filed a Petition for Discretionary Review to the Texas Court of Criminal Appeals. In his petition, Petitioner argued that "he was denied due process of law because of the unconstitutional provision of the Waco City Ordinance." (Petitioner's Petition for Discretionary Review, page 5). Petitioner argued that the notice provision of the ordinance is unconstitutional based upon the fact that it is the City of Waco's process and procedure provided to every other citizen in Waco to afford them notice and an opportunity to cure. Section 17-67(b) of the Code of Ordinances of the City of Waco (Statement of Facts, Volume IV, page 278) is presumably the provision that Petitioner contended is unconstitutional in his Petition for Discretionary Review and in his Petition for Writ of Certiorari. [Petitioner in his Petition for Discretionary Review cited Sec. 17-66 (see Petitioner's Petition for Discretionary Review, pages 8 and 9) but that cite is actually from Sec. 17-67(a) [State's EX. 4, Statement of Facts, Volume IV, page 278, 28]. This case was initiated by a summons, so Sec. 17-67(a) is not applicable. On page 6 of his petition for writ of certiorari, Petitioner also states that Sec. 66 contains a clause that provides that notice is not required for the prosecution of violations of the weeds and grass ordinance.] Sec. 17-67(b) states in

part " . . . It shall not be defense to any action initiated by a summons that a prior notice or citation was not issued." (State's EX. 4, Statement of Facts, Volume IV, page 278, 28).

The Court of Criminal Appeals for the State of Texas refused Petitioner's Petition for Discretionary Review on September 30, 1992. (On page 12a of Petitioner's Appendix, the date is shown to be September 28, 1992, which is in error).

Petitioner was represented by counsel throughout all proceeding in this case prior to the filing of his Petition for Writ of Certiorari.

By his Petition for Writ of Certiorari, Petitioner asserts that he was not given a 10-day notice and an opportunity to cure the violation which is given by the city of Waco to every other weeds and grass ordinance violator. Petitioner also asserts that the city ordinance provision which states that notice is not required for the prosecution of violations of the weeds and grass ordinance is unconstitutional because the City of Waco has used it to deny Petitioner due process of law and equal protection of the law. Petitioner contends that he was denied any appellate review of the matter based upon the amount of the fine.

REASONS FOR DENYING THE WRIT

1.

Petitioner erroneously claims that Robert Pirelo, the City's inspector, testified that every other person subject

to Section 17-65(a)(1) of the Code of Ordinances of the City of Waco was given a ten day notice and a ten day opportunity to cure a violation of the ordinance. Pirelo's reference to a ten day notice provision refers to the notice required to be given before the City of Waco could mow a person's property and file a lien against the property. (Statement of Facts, Volume II, page 47, lines 9-17; page 76, lines 15-25, page 77, lines 1-7). In fact, when asked by Petitioner's attorney "Does the city have a policy that prior to bringing someone to Court for high weeds and grass, that they give some kind of written notice?", Pirelo replied "No." (Statement of Facts, Volume II, page 44, lines 3-6).

2.

Petitioner was given notice regarding the condition of his property months before the date of the violation of the grass and weeds ordinance which is the subject of this case. Robert Pirelo testified that Petitioner's wife called him "approximately around in February", 1990, and that he told her that the property would need to be rid of grass in excess of 12 inches. (Statement of Facts, Volume II, page 34, beginning on line 4). Further, Pirelo testified that Petitioner, Petitioner's attorney, and Assistant City Attorney Annette Jones met in the Municipal Court for the City of Waco in April, 1990, several months prior to the complaint concerning the grass and weeds violation against Petitioner being filed and discussed the fact that the high grass and weeds on Petitioner's property needed to be mowed. (Statement of Facts, Volume II, page 85, beginning on line 20, pages 86 and 87). Petitioner had

ample opportunity to cure the violation but failed to do so.

3.

Petitioner raised the issue of constitutionality of the notice provision of the ordinance for the first time in his first Motion for Rehearing before the Tenth Court of Appeals. However, Petitioner has failed to show that the notice provision is facially unconstitutional. Petitioner's contention that the ordinance is unconstitutional as applied to him has been waived because Petitioner never objected during the trial in order to raise this issue. Even a constitutional right may be forfeited in criminal, as well as in civil, cases, by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it. *Yakus v. United States*, 321 U.S. 414, 444 (1944).

4.

Petitioner has not cited any cases which hold that before a person may be cited or summoned into court for a violation of an ordinance, that the State must give that person written notice of the violation and an opportunity to cure the violation. If such were the the law, it could be argued that the State could not prosecute any traffic violation, building code violation, or violation of any health code requirement until the violator was given written notice and an opportunity to cure the violation.

5.

Petitioner erroneously claims that he has been denied any appellate review of the matter based on the amount of the fine. The Tenth Court of Appeals determined that it had no jurisdiction to hear the case due to the issues raised by Petitioner in his appeal. Petitioner's brief filed with the Tenth Court of Appeals alleged several grounds of error, including one alleging that the evidence was insufficient to sustain the conviction. However, Petitioner's brief did not allege that the ordinance upon which the conviction is based is unconstitutional. Only after the Tenth Court of Appeals dismissed the appeal did Petitioner change his alleged grounds of error in his Motion for Rehearing to state that the ordinance on which the conviction is based is unconstitutional. Not even the "Questions Presented" in Petitioner's Petition for Writ of Certiorari challenge the issue of the constitutionality of the ordinance, but rather make inaccurate, unfounded, and slanderous statements regarding fact questions.

Article 4.03 of the Code of Criminal Procedure of the State of Texas states that the Court of Appeals does not have appellate jurisdiction in cases which have been appealed from any inferior court to the county court at law, in which the fine imposed by the county court at law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the ordinance on which the conviction is based. Since the fine imposed by the county court at law did not exceed one hundred dollars and the issue of the constitutionality of the ordinance was not timely raised, the Court of Appeals correctly determined that it had no jurisdiction and dismissed Petitioner's appeal.

6.

Petitioner falsely accused the City of Waco and the Respondent of fabricating evidence, suborning witnesses to perjury, and conspiring to deny Petitioner the equal protection of the law on page i of his Petition for Writ of Certiorari. Since Petitioner neither elaborated on these accusations nor provided a single example of testimony or other evidence in support of these contentions so that the respondent might refute them, the Respondent's only response is that such accusations are false and are inappropriate questions of fact unrelated to the question of law at bar.

CONCLUSION & PRAYER

In summary, the reasons to deny Petitioner's Writ are as follows:

1. Petitioner draws erroneous conclusions from the testimony at trial.
2. Petitioner was given ample notice of the weeds and grass ordinance violation prior to the date of the violation stated in the complaint against him.
3. The issue of the constitutionality of the notice provision of the ordinance has been waived since it was not timely raised.
4. Petitioner has not cited any authority which requires notice of a violation of an ordinance be given prior to a complaint being filed.
5. Petitioner was properly denied appellate review of this matter because the amount of

the fine did not exceed $100 and the issue of the constitutionality of the ordinance was not timely raised.

6. Petitioner's accusations against the City of Waco and the Respondent concerning fabrication of evidence, perjury, and conspiracy to deny Petitioner the equal protection of the law are false and not supported by the evidence.

For all the foregoing reasons Respondent, the State of Texas, respectfully requests the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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REPLY TO BRIEF IN OPPOSITION

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NO. 92-1198

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM ELLIS MATYASTIK,

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THE STATE OF TEXAS,

Respondent

REPLY TO BRIEF IN OPPOSITION

FAILURE TO GIVE NOTICE

The provision in the City Ordinance that notice is not required in order to prosecute nor is it a defense to prosecution is used by the City of Waco as their defense and excuse for not giving petitioner the notice that is given to every other citizen in the City of Waco.

When the City of Waco gives every other person in the city of Waco written

notice and an opportunity to cure the alleged violation of the City Ordinance and did not give the same opportunity to petitioner, petitioner has been denied due process and the equal protection of the law.

The City of Waco hides behind its own ordinance in denying due process and the equal protection of the law to petitioner.

Petitioner did not err in stating that every other person subject to the Ordinance is given written notice and an opportunity to cure the violation of the Ordinance.

Petitioner is not claiming that before a person can be cited or summoned into court for a violation of an ordinance, that the State must give that person writte notice of the violation and an opportunity to cure the violation.

However, when that is the process and procedure followed by the State for every other person, it is a denial of the equal protection of the law and of due process of

law to deny to petitioner the same written notice and opportunity to cure.

Respondent tries to claim that it gave notice to petitioner by way of a conversation with a third party or that a third person gave petitioner notice in February, 1990, or in April, 1990, that petitioner was violating the weed/grass ordinance on September 24, 1990. Such a claim is absurd and ridiculous.

Further, petitioner was given no notice at any time that he was in violation of the weed/grass ordinance, nor was he given any opportunity to cure the alleged violation.

The following excerpts from the testimony of City Inspector Pirelo are quoted in support of the above.

The testimony is from the Statement of Facts, Volume II of IV, from the trial.

EXCERPTS FROM TESTIMONY

Q How many times have you brought somebody to Court without giving them an opportunity to cure any alleged violation of any city ordinance, Robert?

A Without any -- I've never done that.

Page 82, lines 13 - 16

Q Do you have anything in your file to show any communication with Bill Matyastik about weeds and grass on his property,..?

A I have nothing to show you.

Q You have nothing. You have no memos, you have no communication, you have no letter to him. Do you?

A No, that's right.

Page 88, line 17 - 25, thru Page 89, line 2

On page 25, line 8, the State's witness and inspector was asked about his job responsibilities as an environmental inspector.

At line 15, page 25, Inspector Pirelo answered that his job included "sending

notices on anything above 12 inches". . . . (emphasis added) He tried to say that he gave notice to petitioner by a phone conversation with a third party or that a third party gave the notice in a conversation.

Petitioner would show the Court that this is not "sending notices," and shows that he had no notice of the alleged violation at any time, nor in any manner or by any means.

On page 47, line 16, Inspector Pirelo was asked "What is the notice provision (in the City ordinance)?"

On line 17, Pirelo's answer was "Ten days."

Q What kind of notice is it?

A Well, we have two different kinds. Like I said, one would be the handwritten -- what we call a litter ticket. The other one would be notification through a computer-generated letter. Page 47, lines 18 - 22

Q Is this some kind of written notice?

A Yes, it is. It's typewritten, computer-generated.

Q This is not something that's done over the telephone, is it?

A Huh-huh.

Q This is not something done through a third party. Is it?

A No.

Page 48, lines 3 - 10

Q Can you show me what notice that you gave to Bill Matyastik that he needed to mow his grass in September of 1990?

A Only conversations.

Q Did you ever have a conversation with Bill?

A No.

Page 49, lines 6 - 11

FALSE EVIDENCE FROM STATE

Photographs taken to distort the height of items in the picture, when height is the issue, constitute false evidence.

When such distorted and false evidence is put into evidence before the jury, this is false and perjured testimony.

When this is done knowingly by more than one party or person, it becomes a conspiracy to deprive the petitioner of a fair trial and deny petitioner's right to due process and the equal protection of the law.

The excerpts from the testimony of City Inspector Pirelo, presented on pages 8 thru 11, are quoted in support of the above.

The photographs in the appendix, all taken by Respondent, are in support of the above and refute Pirelo's statement that the property was not mowed from February 1990 to September 24, 1990.

EXCERPTS FROM TESTIMONY

Q Did you kneel down to take these pictures?

A I really don't know.

Q Is that possible?

A Yeah, it could be possible.

Page 57, lines 11 - 14

Q Tell me, Robert, how tall is that -- would you remember that rope being there?

A Yes, sir.

Q How tall is it?

A The same height of the fence at this end and that end, too. But -- I don't know, a foot, a foot and a half from the lowest point.

Page 62, line 20 - 25, page 63, line 1

Q Let me show you the rope in this picture. Can you tell me how tall it is there?

A Considerably higher.

Q Robert, how can -- tell me how tall that rope is in that picture, if it's a foot, a foot and a half in this picture.

A Much higher.

Page 63, line 21 - 25, Page 64, line 1 -4

Q So you didn't go by an exact, precise measurement?

A That's right.

Q And the same thing here, this appears to be, to you, maybe two feet tall here?

A Right.

Q It appears to you to be, what? Eight feet tall here?

A I wouldn't say eight feet, no. I don't know. Maybe -- well, depending on how tall that is. I don't know, maybe five feet. I don't know.

Q Okay. So it's two feet here and five feet here?

A Yeah.

Page 69, lines 1 - 11

Q Robert, can you tell me why in one picture the rope is two feet off the ground and in another picture it's five feet off the ground?

A I don't know.

Page 69, lines 21 - 24

Q Do you see the rope on that picture?

A Yes, I do.

Q How tall is it in that picture, Robert?

A It's above the top of the rebar in this one.

Q Is that one foot or two feet or three feet?

A I don't know. I didn't measure that. I wasn't paying any attention.

Q From your best observation.

A I don't know. Maybe three feet.

Q And this is the same rope that we have in the other two pictures?

A Right.

Q In the other two pictures it was one and a half to two or maybe five, and how it's three feet. Is that right?

A Huh-huh.

Page 73, lines 4 - 21

Q Robert, if we had a witness come to Court and say that he saw you kneeling in the street to take a picture, would that be true or false?

A I probably wouldn't deny it.

Page 74, lines 12 - 15

Q Were some of these pictures taken with you kneeling in the street?

A I don't know.

Page 74, line 24 - Page 75, line 1

Q What is this here in this picture under the rope?

A Right there is a tree.

Page 75, line 10 - 11

Q Did you just tell these ladies and gentlemen that this property was never mowed?

A Yes, that's what I said.

Page 89, lines 14 - 17

CONCLUSION

Petitioner would show the Court that the State has grossly distorted the facts and the evidence and has conspired with its witnesses to deny petitioner a fair trial and due process of law and the equal protection of the law.

For these reasons, petitioner's petition for certiorari should be granted.

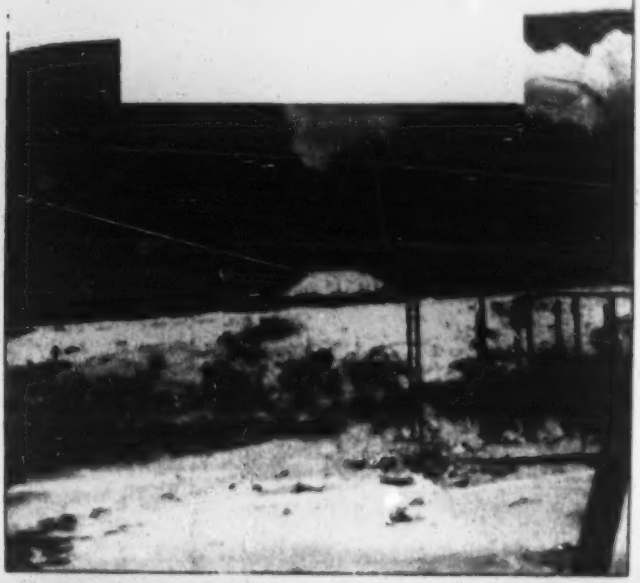
Respectfully submitted,

William Ellis Matyastik
2115 Washington Avenue
Waco, Texas 76701
(817) 756-1421

Rope –

(Ta

Aug. 15, 1990



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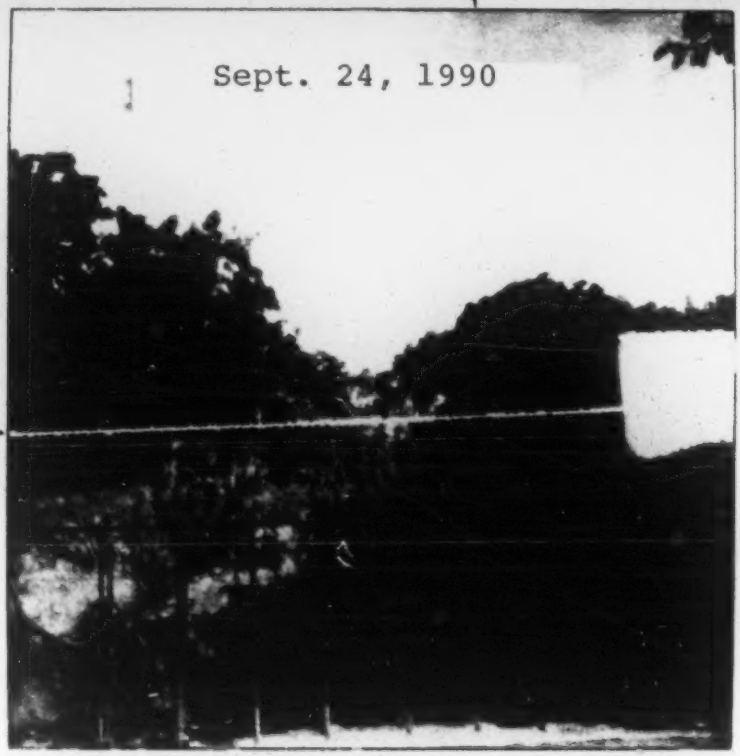
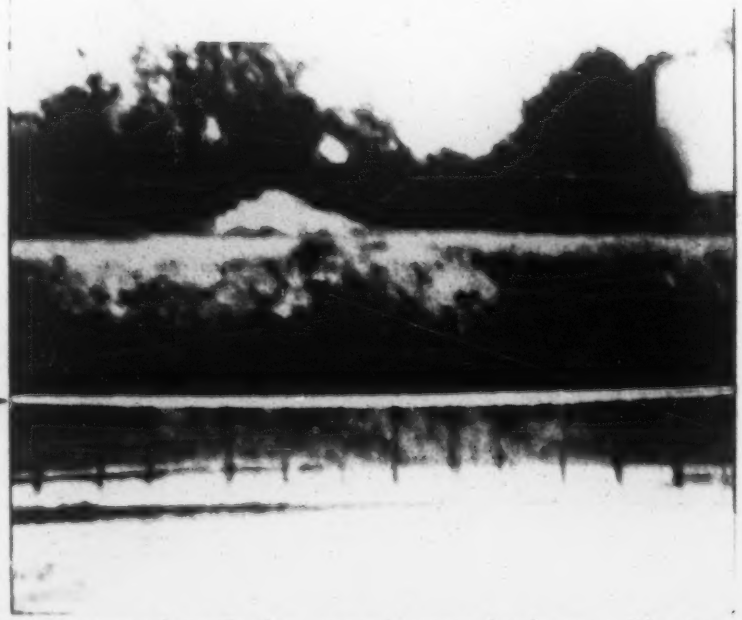
Sept. 1, 1990
(Taken inside the rope 80 feet from the trailer)

Sept. 24, 1990



Nov. 26, 1990



Rope remained in same position. Photo on Sept. 24, 1990, shows the rope midway up trailer, or 12 feet above street level at the curb. Rope was actually 3 feet above the street. Height of rope and grass on Sept. 24, 1990, was distorted.